

## **Election**

The Restriction Requirement states that the application contains claims directed to the following patentably distinct species:

Species A: wherein the first flat film passes partially around the heated roller having the raised surface before the first flat film contacts the second flat film, with the first and second flat films together passing further around the heated roller having the raised surface.

Species B: where the first flat film and the second flat film are in contact with one another when first flat film contacts the heated roller having the raised surface

In response to the Restriction Requirement: (i) **Applicants elect Species A**, and (ii) Applicants identify Claims 1-8 and 10-20 as encompassing elected Species A.

## **Remarks**

As noted on Page 2 of the Restriction Requirement, Claims 1-8 and 10-19 are generic with respect to both Species A and Species B. As such, Claims 1-8 and 10-19 are linking claims. Only Claim 20 is specifically directed to Species A; only Claim 21 is specifically directed to Species B.

Page 2 of the Restriction Requirement further states that the election will result in the prosecution being limited to the subject matter of the elected species in the event that no generic claim is held to be allowable. Applicants agree and further note that MPEP 809 states:

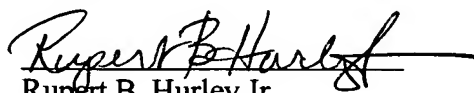
The linking claims must be examined with, and thus are considered part of, the invention elected. When all claims directed to the elected invention are allowable, should any linking claim be allowable, the restriction requirement between the linked inventions must be withdrawn. Any claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from or

requires all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability.”

Thus, the election of Species A should result in the examination including linking Claims 1-9 and 10-19, i.e., in addition to Species A Claim 20. Moreover, in accordance with MPEP 809, if one of the linking claims is allowable, Species B must be rejoined and examined for patentability.

Applicants election of Species A is without traverse. Applicants note that the Restriction Requirement states that Species A and Species B are: (i) independent of each other, (ii) distinct from each other, and (iii) nonobvious variants of each other. The Restriction Requirement states that a traversal on the ground that Species A and B are not patentably distinct from one another can be used as an admission in a §103(a) rejection of the unpatentability of the other species if one of the species is found unpatentable over the prior art. Similarly, in an election as set forth above, which is expressly without traverse, the USPTO has taken the position on the record that Species A is nonobvious over Species B, and vice-versa. Thus, in like manner the USPTO is estopped from later taking the position that prior art rendering one species unpatentable, without more, cannot be used to hold the other species unpatentable. Given the effect of this estoppel on the USPTO, Applicants elect without traverse.

Respectfully Submitted,



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